



1-1-2009

Chapter 8: Ensuring that Lottery Sales Translate into Million Dollar Dreams for California Students

Amber M. Burroff

Pacific McGeorge School of Law

Follow this and additional works at: <http://digitalcommons.mcgeorge.edu/greensheet>

Recommended Citation

40 McGeorge L. Rev. 380

This Article is brought to you for free and open access by the Law Review at Pacific McGeorge Scholarly Commons. It has been accepted for inclusion in Greensheets by an authorized administrator of Pacific McGeorge Scholarly Commons. For more information, please contact msharum@pacific.edu.

Chapter 8: Ensuring that Lottery Sales Translate into Million Dollar Dreams for California Students

Amber M. Burroff

Code Section Affected

Government Code § 8880.321 (amended).

AB 1251 (Tran); 2008 STAT. Ch. 8 (*Effective April 28, 2008*).

I. INTRODUCTION

It's a scorching hot summer day in Sacramento as I navigate through the aisles of a local convenience store in search of much needed refreshment. On my way to the checkout counter, I pass by a large, yellow machine with a logo that calls out to me, "Feeling Lucky?" I silently respond in the affirmative by plugging a one-dollar bill into the machine that makes the dreams of a very small percentage come true.¹ As I feverishly scratch the metallic flakes off my 777 ticket with a penny from the "give one, take one" tray, the cashier chuckles at my enthusiasm. To my dismay, only two of the three required 7's appear in the tiny windows and I push the ticket to the cashier for disposal. He laughs and responds, "Well, consider it a gift to charity . . . you're helping support the little kiddies in California schools." I smile at the irony of the concept: the Lottery's conversion of consumer interests into charitable contributions for the benefit of education.

The California Lottery has been translating million-dollar dreams into a reality for California schools since 1985.² Pursuant to the California State Lottery Act, "at least 34 percent of Lottery Sales" are required to go toward public education funding.³ Since the Lottery's inception, it "has contributed more than \$20 billion to California schools out of total sales of more than \$54.8 billion."⁴ Lottery director Joan Borucki reported that in 2007, the California Lottery "proudly distributed more than \$1 billion to [its] friends in the education community amounting to more than 1 percent of the state's education budget."⁵ Borucki continued, stating that Lottery officials are "honored to be a small part of

1. See WebMATH, *Calculate Your Chance of Winning the Lottery*, <http://www.webmath.com/lottery.html> (last visited Feb. 13, 2009) (on file with the *McGeorge Law Review*) (explaining that an individual is more likely to get into a car accident, plane crash, or to be struck by lightning than to win the lottery).

2. Press Release, Cal. Lottery, Lottery Report: \$3.3 Billion in Sales, \$1.7 Billion in Prizes (Jan. 9, 2008), <http://www.lotteryinsider.com/vol42/no3.htm> [hereinafter Cal. Lottery Press Release] (on file with the *McGeorge Law Review*).

3. *Tran Bill Signed by Governor to Keep Education Dollars Flowing From State Lottery*, CAL. CHRON., Apr. 23, 2008, <http://www.californiachronicle.com/articles/59631> [hereinafter *Tran Bill Signed by Governor*] (on file with the *McGeorge Law Review*).

4. Cal. Lottery Press Release, *supra* note 2.

5. *Id.*

every student's life and look forward to the opportunity to create new revenues in the coming year."⁶

Concerned with California's severe budget deficit, the Legislature has acknowledged the need to maintain the flow of education dollars from the Lottery into the classrooms.⁷ Chapter 8 ensures that the gravely needed dollars obtained from MEGA Millions⁸ will continue to provide a transfusion of vitality into California's burdened education system.⁹

II. LEGAL BACKGROUND

The California State Lottery was created after voters approved Proposition 37, the California State Lottery Act of 1984 (Lottery Act), which authorized the operation of the California State Lottery.¹⁰ The Lottery Act's purpose was to provide additional funds for the benefit of the state education system without increasing taxes.¹¹ Existing law requires that any amendment to the Lottery Act's provisions must comport with this stated purpose.¹²

In June 2005, more than twenty years after the Lottery Act was passed, California became the twelfth state to join the multi-state lottery game, MEGA Millions.¹³ The California State Attorney General's Office issued an informal letter of advice to the California Lottery Commission (Commission) authorizing California's participation in a multi-state lottery game, which influenced its decision to join MEGA Millions.¹⁴ The letter of advice "stated that the Commission, 'under the Joint Exercise of Powers Act'¹⁵ may enter into agreements to offer an interstate or an international lottery game."¹⁶ "On July 13,

6. *Id.*

7. *See Tran Bill Signed by Governor, supra* note 3 (quoting Assembly Member Van Tran's assessment of California's budget and the consequential need for California "to remain diligent in ensuring that [Lottery] funds translate into real results in our schools").

8. *See* MEGA Millions, History of the Game, <http://www.megamillions.com/about/history.asp> (last visited Feb. 13, 2009) (on file with the *McGeorge Law Review*) (describing MEGA Millions as the record holder for the largest jackpot in North America and the "country's most widely played multi-state jackpot game").

9. *Tran Bill Signed by Governor, supra* note 3.

10. CAL. GOV. CODE § 8880 (West 2005); SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 1 (Feb. 26, 2008).

11. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 1 (Apr. 18, 2007).

12. *Id.*

13. *Id.* at 2.

14. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1251, at 2 (Mar. 5, 2008).

15. *See* JEFF STAVA, CSDA FIN. CORP., JOINT POWERS AUTHORITIES: THEIR USES AND ABUSES 1 (Nov.-Dec. 2006) (on file with the *McGeorge Law Review*) (stating that the Joint Exercise of Powers Act (JPA Act) was created by the California Legislature because "it made sense to allow public agencies to work together"). In general, the purpose of the JPA Act is to "allow[] two or more public agencies to create a joint powers authority for the exercise of common powers." *Id.*

16. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 2 (Apr. 18, 2007); CAL. GOV. CODE §§ 6500-6599.3 (West 2008) (known as the Joint Exercise of Powers Act).

2006, Sacramento Superior Court judge Lloyd Connelly issued a writ finding that the [Commission] does have the statutory authority to enter into a multistate lottery, pursuant to the California Lottery Act and the Joint Exercise of Powers Act.”¹⁷

This ruling came as a result of a lawsuit filed by the Coalition Against Gambling Expansion (CAGE).¹⁸ In filing the lawsuit, CAGE attempted to prevent California from participating in a multi-state lottery on the basis that neither the Legislature nor the voters approved such participation when the Lottery Act was passed.¹⁹ Judge Connelly resolved the controversy, holding that “Mega Millions [is] ‘substantially lawful’ . . . because the state retains control of its portion of the game within California, in keeping with voters’ approval of a state lottery in 1984.”²⁰ However, noting a discrepancy in claim periods between the twelve states, he ordered the Commission to address the inconsistency within one year, either through legislation or agreement with the other participating states.²¹

The Commission attempted to resolve the claim-period discrepancy through an administrative solution that would seek conformity between the other eleven MEGA Million’s states’ jackpot deadlines and California’s deadline.²² However, this method of resolution was met with opposition from CAGE representatives who believed that “‘while the ruling gave some discretion to the [Commission] as to how they will honor the judicial mandate to correct their violation of law, . . . the only proper course is through our elected representatives in a deliberative and public legislative process.’”²³ It became clear that CAGE representatives might end up getting their way in August of 2007, after the Commission reported to the Superior Court that all administrative efforts to resolve the discrepancy had been exhausted.²⁴ At this point, a resort to the legislative process appeared to be the Commission’s only hope for compliance with Judge Connelly’s Order.²⁵

17. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1251, at 3 (Mar. 5, 2008).

18. Cf. California Council on Alcohol Problems, *Important History and Background on CAGE*, http://calcap.org/ccage_history.html (last visited Oct. 5, 2008) (on file with the *McGeorge Law Review*) (explaining that the California Coalition Against Gambling Expansion was incorporated on Jan. 29, 2003, with the stated purpose “to shape gambling policies in the State of California and to carry on other education, nonprofit activities associated with this goal as allowed by law”).

19. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 2 (Apr. 18, 2007); Steve Geissinger, *Lotto Has Yet to Respond to Court Order*, OAKLAND TRIB., July 16, 2006, http://findarticles.com/p/articles/mi_qn4176/is_20060716/ai_n16540643 (on file with the *McGeorge Law Review*).

20. Geissinger, *supra* note 19.

21. Cal. Coal. Against Gambling Expansion v. Cal. State Lottery Comm’n, No. 05CS00984 (Cal. Super. June 6, 2006) (ruling on submitted matter); ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 2 (Apr. 18, 2007); Geissinger, *supra* note 19.

22. Geissinger, *supra* note 19.

23. *See id.* (quoting Nicholas Roxborough, an attorney who represented CAGE in its lawsuit against the Commission).

24. SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 3 (Feb. 26, 2008).

25. *See id.* (explaining that the Commission had exhausted its administrative solutions and that the

III. CHAPTER 8

Chapter 8 is the Legislature's response to Judge Connelly's finding that there was a discrepancy between the claim period for California's multi-state lottery game, MEGA Millions, and the claim period allowed by other participating states.²⁶ The legislation extends the time for claiming a MEGA Millions jackpot or grand prize from the current 180-day period to one year after a lottery drawing.²⁷ This extension of the claim period brings the statute into compliance with Judge Connelly's order²⁸ requiring the Commission to rectify the discrepancy.²⁹ Chapter 8 also "declares that [its provisions] further[] the purposes of the California State Lottery Act of 1984,"³⁰ as required by existing law.³¹

IV. ANALYSIS OF CHAPTER 8

Chapter 8 had been introduced and was moving through the Legislature when, on September 12, 2007, the Superior Court held that the Commission was "making good faith efforts to comply" with and address the concerns set forth in Judge Connelly's order.³² According to Assembly Member Van Tran, who authored Chapter 8, the legislation was intended to give citizens in California "a longer period to claim their prize, and this reconciles our deadline with those of the other states."³³ Thus, Chapter 8 assisted the Commission by harmonizing California's claim period with that of the other states participating in MEGA Millions. The modification of the claim period was necessary to ensure that lottery revenues will accrue for the benefit of California's public education system, a concern that was expressed in Judge Connelly's decision.³⁴

consequence of this was the introduction of legislation in order to establish compliance with Judge Connelly's order).

26. CAL. GOV. CODE § 8880.321(e) (amended by Chapter 8); SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1251, at 3 (Mar. 5, 2008).

27. CAL. GOV. CODE § 8880.321(e) (amended by Chapter 8); SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 3 (Feb. 26, 2008).

28. Cal. Coal. Against Gambling Expansion v. Cal. State Lottery Comm'n, No. 05CS00984 (Cal. Super. June 6, 2006) (ruling on submitted matter).

29. ASSEMBLY COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 2 (Apr. 18, 2007).

30. CAL. GOV. CODE § 8880.321(e) (amended by Chapter 8); SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 1-2 (Feb. 26, 2008).

31. SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 2 (Feb. 26, 2008).

32. *Id.* at 3; Cal. Coal. Against Gambling Expansion, No. 05CS00984 (ruling on submitted matter).

33. Patrick McGreevy, *Californians to Get a Full Year to Claim Mega Millions Wins*, L.A. TIMES, Apr. 24, 2008, at B4.

34. See Cal. Coal. Against Gambling Expansion, No. 05CS00984 (ruling on submitted matter); SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 1-2 (Feb. 26, 2008) (stating that under existing law, the Lottery Act of 1984, "[p]rovides that at least 50 percent of lottery revenues be returned to the public in the form of prizes, at least 34 percent be allocated to benefit public education, and no more than 16 percent be allocated for lottery expenses"); Geissinger, *supra* note 19.

No opposition was registered against Chapter 8.³⁵ In fact, it received strong support in the Legislature.³⁶ Its registered supporters included the California State Lottery and the California Independent Grocers Association.³⁷ The resounding support for this measure likely stemmed from the concern that the claim period discrepancy may have jeopardized the revenue created by MEGA Millions that helps to fund education in California.³⁸ Judge Connelly explained that as a result of the discrepancy, “the California State Lottery’s proportionate share of Mega Millions jackpot prize money for a player in the state of a party lottery having a one-year claim period may be claimed for 180 days after the prize money would revert for the benefit of public education in California.”³⁹ The consequence of this is that revenues might not accrue, threatening the availability of this valuable contribution to California schools.⁴⁰

The director of the California Lottery believed that Chapter 8 ““should allow us to put the concerns about Mega Millions behind us . . . Californians can now continue to enjoy this exciting game and the more than \$834 million in cash prizes since the California Lottery began offering Mega Millions in 2005.””⁴¹ As a result of Chapter 8’s resolution of the claim period discrepancy, the supplemental education funding that MEGA Millions provides will continue to flow into California’s classrooms.⁴²

V. CONCLUSION

By enacting Chapter 8, the Legislature modified the law to resolve Judge Connelly’s concern regarding the inconsistent claim periods between MEGA Millions states.⁴³ Although CAGE officials originally contested California’s participation in a multi-state lottery, they ultimately expressed support for the legislative resolution to this discrepancy.⁴⁴ Unanimous support for this measure likely stemmed from the recognition that the claim period discrepancy threatened

35. SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 3 (Feb. 26, 2008).

36. *Tran Bill Signed by Governor*, *supra* note 3.

37. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1251, at 3 (Mar. 5, 2008).

38. *See* McGreevy, *supra* note 33 (expressing the concern of California officials, including Judge Connelly, that California’s 180 day claim period created a possibility that California would lose this significant source of revenue for its education system).

39. *Id.*

40. *Id.*; SENATE COMMITTEE ON GOVERNMENTAL ORGANIZATION, COMMITTEE ANALYSIS OF AB 1251, at 3 (Feb. 26, 2008).

41. McGreevy, *supra* note 33.

42. Press Release, Cal. State Assembly Republican Caucus, Assemblyman Tran Bill Signed by Governor to Keep Education Dollars Flowing from State Lottery (Apr. 23, 2008) [hereinafter Assembly Republican Caucus Press Release] (on file with the *McGeorge Law Review*).

43. CAL. GOV. CODE § 8880.321(e) (amended by Chapter 8); SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1251, at 3 (Mar. 5, 2008).

44. Geissinger, *supra* note 19.

the supplemental education funding that MEGA Millions contributes to California schools.⁴⁵ Emphasizing California's current need for this source of funding, Chapter 8's author explained that

[t]he quality of our education is not determined by how much is spent, but by how and where it is spent. We are currently spending more than fifty billion dollars a year on education, but we cannot afford to spend any less despite our grave budget deficit, so I'm glad that [Chapter 8] will keep the education dollars from the Lottery flowing into classrooms.⁴⁶

So the next time that big yellow machine calls out to you, "Feeling Lucky?"—rest assured that one dollar to the Lottery translates into thirty-four cents toward the dreams of California students.⁴⁷ If you are disappointed at your loss of that million dollar jackpot, remember that in the eyes of the California Legislature—you just made a generous gift to charity.⁴⁸

45. SENATE FLOOR, COMMITTEE ANALYSIS OF AB 1251, at 3-4 (Mar. 3, 2008) (noting that AB 1251 received unanimous approval by the Assembly and had no recorded opposition).

46. Assembly Republican Caucus Press Release, *supra* note 42.

47. Cal. Lottery Press Release, *supra* note 2.

48. Non-tax-deductible, of course.